

MORGANTOWN BOARD OF ZONING APPEALS

Minutes

October 24, 2007

6:30 PM

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, Mark Furfari, Nick Iannone (arrived at 6:45)

MEMBERS ABSENT: Jim Shaffer

STAFF PRESENT: Christopher Fletcher, AICP

I. MATTERS OF BUSINESS:

- A. Approval of August 15 minutes. Furfari moved to table until the November meeting because Iannone and Shaffer were not present; second by Cardoso. The motion passed unanimously.
- B. Approval of September 19, 2007 minutes. Furfari moved to approve with the correction to the spelling of Cardoso's name. Cardoso seconded it. The motion passed unanimously.
- C. Discuss and Approve Bylaw Revisions. Fletcher advised that a portion of the proposed revisions were inadvertently omitted from the packet. Cardoso moved to table the item until next month's meeting; Furfari seconded. The motion passed unanimously.

II. OLD BUSINESS:

- A. **CU07-11 / Anvil Enterprises, LLC / 1370 University Avenue.** Request by Anvil Enterprises, LLC for conditional use approval for a "Restaurant private club" license in the B-4 District at 1370 University Avenue. Tax Map #26A Parcel #82; a B-4, General Business District.

Fletcher advised that the petition had withdrawn the question.

III. NEW BUSINESS:

- A. **V07-36 / Culton Construction / French Quarters.** Request by Culton Construction for variance relief from Article 1335.04 Planning & Zoning Code as it relates to minimum rear setbacks in the R-1A District at 14 French Quarters, Lot 6. Tax Map #55 former Parcel #31-31; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to construct a single-family dwelling in the French Quarters subdivision on lot #6. The proposed site plan demonstrates conformance with the front and side setback standards. However, the northwest corner of the structure encroaches into the minimum required rear setback of 20 feet by 4.5 feet. The subject parcel is oddly shaped in that the proposed rear setback at the eastern corner of the structure is 27 feet while the proposed rear setback at the western corner of the structure is 15.5 feet. The Planning & Zoning Code does not permit averaging to determine setbacks as illustrated by the petitioner on the site plan. Fletcher also read an email in opposition of the request submitted by Aaron Cumpston.

Bossio asked if he should recuse himself since he owned property abutting the property in question. Scott Krabill, RSK Engineering, appearing on behalf of the applicant, stated he did not believe it was necessary.

Krabill explained that while doing site planning for the French Quarter subdivision, the building footprint would not accommodate all setbacks required for this particular lot. The average set back would be close to satisfying the rear set back requirement, but felt there would be no way to fit the footprint without violating one or more of the setback requirements. He felt this was the best way to situate the structure on the property. He explained that all homes in the subdivision were basically the same style and in order to meet the requirement a new design for the home would be necessary and it would not look the same as the other homes.

Cardoso asked if Mr. Cumpston's privacy would be at issue. Krabill advised it would be very difficult to ascertain the difference of about four feet once the home was constructed and landscaped.

Furfari was concerned that Cumpston felt the homes were already pushing against his property. Krabel stated they did not violate any setbacks and he was not sure what Cumpston was referring to.

There being no additional questions by the Board, Bossio asked for public comments. No public comments offered.

Fletcher noted that Staff recommended approval of the variance petition as requested by finding in the affirmative for each of the Findings of Fact with Staff suggested revisions:

Finding of Fact #1: Furfari moved to approve the finding of fact recommended by Staff as:

"The French Quarter development includes similarly designed homes, relative to square footage and architectural character, which cannot be developed on the subject parcel due to its irregular shape without moderately encroaching into the rear setback."

Cardoso seconded the motion; the motion passed unanimously.

Finding of Fact #2: Furfari suggested that the finding of fact submitted by the applicant be revised by replacing "purchased property" with "subject property" as:

"The subject property does not permit construction of the type and style of upscale home that has been constructed, or is planned, for the surrounding properties."

Cardoso moved to accept the finding of fact and include Furfari's suggested revision; Iannone seconded. The motion passed unanimously.

Finding of Fact #3: Furfari moved to accept the finding as submitted by the applicant as:

"It will simply permit the property owner to construct a home that is nearly identical to the houses in the immediate vicinity of the subject site."

Cardoso seconded the motion; the motion passed unanimously.

Finding of Fact #4: Iannone moved to accept the finding as submitted by the applicant but removing the quotations enclosing the word “compliance” as:

“It will merely allow the property owner to build a house that is similar to the existing surrounding homes and is otherwise in compliance with the intended subdivision use.”

Cardoso seconded the motion; the motion passed unanimously.

Furfari moved to grant a 4.5-foot variance from the rear setback standard as requested for the proposed construction of a single-family dwelling for approval; Cardoso seconded. The motion passed unanimously.

Bossio advised the applicant that anything done between now and 30 days would be done at the applicant’s financial risk.

B. V07-37 thru 39 / Glenmark / 1550 Earl Core Road. Request by Glenmark Holding, LLC for variance approval from the Planning and Zoning Code, Article 1365.04 (G), pertaining to the maximum number of parking spaces in a non-residential district for property located at 1550 Earl Core Road. Tax Map #31 Parcel #108; a B-2, Service Business District.

Fletcher noted that the Staff Report concerning the 1550 Earl Core Road site addressed each of the following variance petitions on the agenda:

- V07-37 Article 1365.06 (G) – exceeding maximum number of parking spaces
- V07-38 Article 1347.04 (A) – exceeding maximum number of front setback
- V07-39 Article 1347.06 (B) - parking between street and front façade

Fletcher read the Staff Report stating that the petitioner has entered into an option agreement with the General Services Administration (“GSA”). As a part of the agreement, GSA has issued a solicitation to bid for the construction of an approximately 30,500 ft² building and related parking. The use of the building will be considered “government facility” as it will house the U.S. Department of Agriculture and related agencies, which are currently located in the federal building on High Street. Addendum A of this report illustrates the location of the subject site.

The GSA’s solicitation process provides that interested developers prepare and submit design and site plan proposals, which are reviewed in accordance with GSA standards. It is expected that, while each proposal will have to meet GSA design and security standards for the development of federally owned or leased buildings, each proposal will contain different design approaches.

In reviewing the City’s Planning & Zoning Code, GSA has identified three specific regulations that conflict with its minimum design, performance, and security standards:

- Article 1365.06 (G) – maximum number of parking spaces
- Article 1347.04 (A) – maximum front setback
- Article 1347.06 (B) – parking between street and front façade

In speaking with a GSA official, Staff concurs that the conflict between said standards exists regardless of final site plan design selection. Said conflicts and the petitioner’s pursuit of relief do not relate to specific site constraints, which is customary under normal private development

scenarios. Further, it appears that the GSA's standards would conflict with the related Planning & Zoning Code provisions in most zoning districts where this type of development is permitted. GSA appears motivated to seek said variance relief at this stage of their development process so that interested developers may address GSA design and security standards with an understanding that relief has been either granted or denied on these three specific issues. In other words, it appears critical to the GSA that all interested developers understand equally the parameters within which they can design and submit their proposals.

Once GSA has selected a successful proposal, site plan documents will be submitted for review and approval by the Planning Commission as a "Development of Significant Impact." Any additional elements that do not meet Planning & Zoning Code requirements will require review and approval by the Board.

Bossio disclosed that he was contacted by Glen Adrian, Glenmark Holding, and was only asked whether or not the Board had all paperwork that was needed for the meeting.

Brian Gallagher, attorney representing Glenmark was present. He stated the property is a former DOH site, but the site had some environmental contamination. The site has since been remediated but there are wells in the front section of the property that would impede development there.

Iannone asked how long the monitoring wells would have to be in place. Gallagher stated they could come out fairly quickly but it is a DEP call.

Furfari questioned if the building would house offices. Gallagher stated it is office space for USDA similar to the one located on High Street. The government requires a minimum of 165 parking spaces but would have to satisfy the city's green space requirement and there is ample space to accomplish this.

Fletcher said that if the variance was granted there would be a minimum of a 10-foot buffering. GSA requires a 20-foot buffer around the building be green space. Gallagher explained the successful bidder, which may or may not be Glenmark, would ultimately own the property. They would buy the property from Glenmark and lease it back to GSA. Taxes and fees would be paid to the City.

Furfari stated he was bothered that another government building would be locating there.

Mark Nesselroad, of Glenmark, addressed Furfari's concerns stating that this building would house a federal credit union and would employ approximately 100 people. The building would be similar in use to the United Center in Suncrest. He explained 35,500 square feet is net space and the building may include two stories. The government now has to meet all new homeland security requirements, including the 20-foot buffer zone.

There being no additional questions by the Board, Bossio asked for public comments. No public comments offered.

Fletcher reminded the Board that each of the three (3) variance petitions must be considered and acted upon by the Board separately. Fletcher noted that Staff concurs with the Findings of Fact as presented by the petitioner in each of the three variance applications and recommends approval with the following conditions:

1. That the final site plan and design be reviewed and approved by the Planning Commission; and,
2. That variance approval must be obtained for any and all additional elements illustrated in final site plan documents that do not meet Planning & Zoning Code requirements.

Finding of Fact #1: Furfari asked if fleet vehicles were going to be parked overnight anywhere between the building and the street could be restricted. Fletcher believed the location of fleet vehicles would most likely be concentrated to a secure area that would most likely be at the rear. Fletcher noted that this would be reviewed by the Planning Commission. Iannone moved to approve the finding submitted by the applicant as:

“The Property's intended use will be “government facility” for the GSA. The GSA is subject to strict design guidelines that mandate the number of parking spaces that must be provided for this site. The building will be used for a USDA facility with employees arriving on site, transferring to a government vehicle, then leaving the Property in the government vehicle. Thus, the site will, for short periods of time, have extraordinary parking needs. The contemplated surface parking facility will include an area dedicated to government fleet vehicles. Article 1365.04 (I) provides that every vehicle normally stored at the site must have its own parking stall and that such space is in addition to the minimum parking requirements. Although the number of government fleet vehicles is unknown, it is safe to assume that a portion of the spaces that exceed the maximum parking allowance will be dedicated to fleet vehicles.”

Cardoso seconded the motion; the motion passed unanimously.

Finding of Fact #2: Furfari moved to approve the finding submitted by the applicant as:

“There are a number of existing developments along Earl Core Road that appear to exceed the recently enacted maximum parking standard.”

Iannone seconded the motion; the motion passed unanimously.

Finding of Fact #3: Furfari questioned whether any traffic would be going out the back of the property onto Sabraton Avenue. Fletcher advised that the elevation change from Earl Core Road to Sabraton Avenue may not make this access possible. The issue would be reviewed by the Planning Commission. Iannone moved to approve the finding submitted by the applicant as:

“Granting the variance will not be harmful to the public because the Property is large enough to satisfy GSA's parking requirements without placing any burden on adjacent property or improvements. Access to the property will be pursuant to a WVDOH entrance permit and access will be to Earl Core Road, which is the appropriate access road for this project, having the capacity to handle the traffic generated by the project.”

Cardoso seconded the motion; the motion passed unanimously.

Finding of Fact #4: Furfari moved to approve the finding as submitted by the applicant as:

“The Sabraton area has a wide range of land use characteristics including retail, residential, and office uses. Granting the variance will permit the construction of

a building that has very similar characteristics as other uses in the area. The market value of adjacent properties will not be diminished because the Property is large enough to allow the parking of this number of vehicles without any adverse impact on adjacent properties.”

Iannone seconded the motion; the motion passed unanimously.

Cardoso moved to grant the variance as requested with Staff’s recommended conditions; second by Iannone. The motion passed unanimously.

C. V07-38 / Glenmark Holding, LLC / 1550 Earl Core Road: Request by Glenmark Holding, LLC for variance approval from the Planning and Zoning Code, Article 1347.04 (A), pertaining to the maximum front setback in the B-2 District for property located at 1550 Earl Core Road. Tax Map #31 Parcel 108; a B-2, Service Business District.

There being no additional questions by the Board, Bossio asked for public comments. No public comments offered.

Finding of Fact #1: Furfari moved to approve the finding submitted by the applicant as:

“GSA security regulations dictate rigid minimum setback requirements, which conflict with the City’s zoning standards. Further, the necessity of a fire lane makes it impossible for the proposed building to comply with the City’s maximum set back lines. Variance relief appears to be necessary to ensure that the federal offices can be developed on the subject site or potentially any site within the City of Morgantown.”

Cardoso seconded the motion; the motion passed unanimously.

Finding of Fact #2: Iannone recommended changing the first sentence of the finding submitted by the applicant. Cardoso moved to approve the finding with Iannone’s recommended revision as:

“The majority of the properties in the Sabraton area exceed the maximum set back restrictions. The former Chrysler dealership, Kroger, Food Lion, Sabraton Plaza, Sheetz, First United Bank & Trust, and Arby’s are good examples.”

Furfari seconded the motion; the motion passed unanimously.

Finding of Fact #3: Furfari moved to approve the findings submitted by the applicant as:

“The parcel is large enough that granting the variance will not be detrimental to the public or to other properties in the area. The rear setback requirements will not be harmed. Adjacent parcels do not conform to the maximum front setback restriction, so granting it may benefit adjacent properties because views of adjacent properties from Earl Core Road will not be blocked.”

Cardoso seconded the motion; the motion passed unanimously.

Finding of Fact #4: Furfari moved to approve the finding submitted by the applicant as:

“The granting of the variance will not alter land use characteristics as other properties in the area do not conform to the maximum front setback requirement. Market value will not be affected, and may be helped, because of potentially better views of adjacent properties. Granting the variance will have no effect on congestion of public streets.”

Iannone seconded the motion; the motion passed unanimously.

Furfari moved to grant the variance as requested with Staff’s recommended conditions; second by Cardoso. The motion passed unanimously.

D. V07-39 / Glenmark Holding, LLC / 1550 Earl Core Road: Request by Glenmark Holding, LLC for variance approval from the Planning and Zoning Code, Article 1347.06 (B), pertaining to the prohibition of parking between the front façade of a building and any street right-of-way for property located at 1550 Earl Core Road. Tax Map #31 Parcel #108; a B-2, Service Business District.

There being no additional questions by the Board, Bossio asked for public comments. No public comments offered.

Finding of Fact #1: Furfari moved to approve the finding submitted by the applicant as:

“The GSA’s building setback requirements and parking requirements create circumstances that require parking to be located in front of the building in order to provide for the optimal use of the property.”

Cardoso seconded the motion; the motion passed unanimously.

Finding of Fact #2: Iannone moved to approve the finding submitted by the applicant as:

“Almost all other properties in the Sabraton area have parking located between the front of the building and Earl Core Road.”

Furfari seconded the motion; the motion passed unanimously.

Finding of Fact #3: Cardoso moved to approve the finding submitted by the applicant as:

“The parcel is large enough that granting the variance will not be detrimental to the public or to other properties in the area. Parking in front of the building will not create any traffic congestion issues or entrance/ exit issues. Because of the large setback requirements, traffic will be able to maneuver on the property with little concern of creating traffic backup on Earl Core Road. Almost all other property in Sabraton has parking in front of the building, so no harm will occur to these properties.”

Iannone seconded the motion; the motion passed unanimously.

Finding of Fact #4: Furfari moved to approve the finding submitted by the applicant as:

“The land use characteristics in Sabraton show that most parcels have parking in front of the buildings. Market value will not be decreased by allowing parking to continue as it does on adjacent properties. Granting the variance will not increase congestion because ample property exists to allow for stacking on site, with little concern of traffic backing up onto Earl Core Road.”

Iannone seconded the motion; the motion passed unanimously.

Cardoso moved to grant the variance as requested with Staff’s recommended conditions; second by Furfari. The motion passed unanimously passed.

Bossio advised the applicant that, with all three requests, anything done between now and 30 days would be done at the applicant’s financial risk.

PUBLIC COMMENT: None

STAFF COMMENTS:

1. Fletcher noted that a copy of the memo to the City Engineer and the Traffic Commission concerning Christie Street was included in the packet. Bossio asked why the same concerns raised by the Planning Commission in 1994 had not been addressed. Fletcher stated that he had no working knowledge as to why previous Planning Directors had not addressed the illegal curb cut onto Christie Street.
2. Fletcher addressed some of the questions and concerns raised during the September Board meeting regarding “restaurant, private clubs” and their conformance with the 60/40 food and non-alcoholic beverage sales. Fletcher noted that the Planning Department’s investigation of several establishments was ongoing and included working with the Monongalia County Health Department. Furfari questioned Jim Smith’s (WVABCA Inspector) attendance at last month’s meeting. Fletcher advised that the Planning Department has begun notifying him of all “restaurant, private club” conditional use request to keep them apprised of potential new locations.
3. Iannone thanked the Planning Department for assisting applicants with their findings of fact and including them in the minutes of the meetings.

Meeting was adjourned at 7:50.